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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/650,362	08/29/2000	Julie J. Bennett	42390P9622	8226

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EXAMINER

WONG, LESLIE

ART UNIT PAPER NUMBER

2167

DATE MAILED: 09/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/650,362

Applicant(s)

BENNETT ET AL.

Examiner

Leslie Wong

Art Unit

2167

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 July 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-12,14-23 and 25-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-12,14-23 and 25-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08/29/2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Appeal Brief

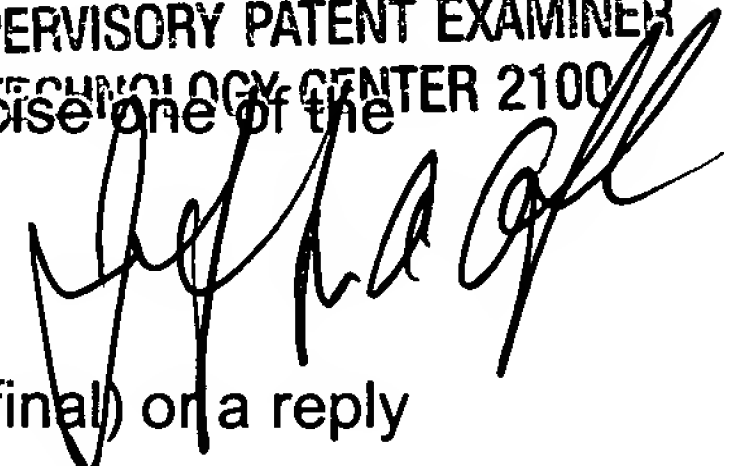
1. In view of the Appeal Brief filed on 01 July 2005, PROSECUTION IS HEREBY REOPENED. A new ground of rejection set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

- (1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,
- (2) request reinstatement of the appeal.

If reinstatement of the appeal is requested, such request must be accompanied by a supplemental appeal brief, but no new amendments, affidavits (37 CFR 1.130, 1.131 or 1.132) or other evidence are permitted. See 37 CFR 1.193(b)(2).

JEFFREY GAFFIN
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100



Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The analysis under 35 U.S.C. 112, first paragraph, requires that the scope of protection sought be supported by the specification disclosure. The pertinent inquiries include determining (1) whether the specification disclosure as a whole is to enable one skilled in the art to make and use the claimed invention.

3. Claims 1, 3-12, 14-23, and 25-33 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claims 1, 12, and 23 recite *"upon a user logging on to a virtual store having a visual browser via a computer network, displaying a random assortment of products to the user associated with the virtual store without regard to a user profile"*. The limitation *"without regard to a user profile"* contains conflicting or mutually exclusive limitation when being considered with the limitation *"Upon a user logging on to a virtual store"*. The Examiner interprets the limitation *"user logging on..."* as the user has to input his USERID and PASSWORD into the system in order to gain access to the ACCOUNT information setup from the virtual store. As such, the USERID and PASSWORD is equivalent to a USER PROFILE. The invention establishes a user profile via a logging in process and then processing the information without regarding the user profile which appears to be inconsistent with the known practice.

Claims 3-11, 14-22, and 25-33 are rejected for fully incorporating the deficiencies of their respective base claims by dependency.

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claim 1, 3-12, 14-23, and 25-33 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1, 12, and 23 recites "Upon a user logging on to a virtual store.... without regard to a user profile" creates a conflicting situation. Due to the apparent mutually exclusive limitations contained in claims 1, 12, and 23 (i.e., "Upon a user logging on to a virtual store....without regard to a user profile") no meaningful comparison with the prior art can be made for limitation "without regard to a user profile" of claims 1, 12, and 23 at this time.

Further, the limitation "**without regard to a user profile**" is a NEGATIVE limitation that rendered the claims indefinite because it is an attempt to claim the invention by excluding what the inventors did not invent rather than distinctly and particularly pointing out what they did invent. In re Schechter, 205F.2d 185, 98 USPQ 144 (CCPA) 1953.

Claims 3-11, 14-22, and 25-33 are rejected for fully incorporating the deficiencies of their respective base claims by dependency.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

Art Unit: 2167

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 1, 3-12, 14-23, and 25-33 are rejected under 35 U.S.C. 102(e) as being anticipated by **Jacobi et al.** (“Jacobi”) (U.S. Patent 6,317,222 B1).

Regarding claims 1, 12, and 23, **Jacobi** teaches a method and an apparatus comprising:

a). user logging on to a virtual store having a visual browser via a computer network, displaying a random assortment of products to the user associated with the virtual store (col. 5, lines 19-22 and 32-35);

b). creating a plurality of categories, each category identifying an attribute (col. 5, lines 32-35; col. 7, lines 5-7 and 14-17; col. 1, lines 16-22 and 46-49);

c). associating products (i.e. books, CDs, or videos) having at least one attribute with at least one category (i.e., non-fictions, comedies) (col. 2, lines 46-49);

d). upon selection of a main product by a user in communication with the visual browser, automatically displaying a plurality of related products having at least one attribute in common with the main product that are selectable for purchase by the user (col. 10, lines 45 – 63; col. 7, lines 5-9; col. 4, lines 2-6; Fig. 2, element 94).

Regarding claims 3, 14, and 25, **Jacobi** further teaches a step comprising, displaying at least one other product that is not related by a category to the main product (col. 4, lines 2-6).

Regarding claims 4, 15, and 26, **Jacobi** further teaches a step comprising, assigning a weight bias to each category based upon a predefined importance of the respective category (col. 3, lines 23-27).

Regarding claims 5, 16, and 27, **Jacobi** further teaches a step comprising:

- a). determining "like" categories for the main product, a "like" category being a category that the main product is associated with (col. 8, lines 60-63);
- b). selecting one of the "like" categories (col. 10, line 63 – col. 11, line 2); and
- c). randomly selecting the at least one other related product from the selected "like" category (col. 5, lines 19-22).

Regarding claims 6, 17, and 28, **Jacobi** further teaches a step wherein selecting one of the "like" categories includes utilizing the weight biases for the categories in a randomly based selection algorithm to select one of the "like" categories (col. 8, lines 28-39).

Regarding claims 7, 18, and 29, **Jacobi** further teaches a step comprising:

- a). determining "dislike" categories for the main product, a "dislike" category being a category that the main product is not associated with (col. 15, lines 58-62);
- b). selecting one of the "dislike" categories utilizing the weight biases for the categories in a randomly based selection algorithm (col. 5, lines 19-31); and
- c). randomly selecting at least one other product from the selected "dislike" category (col. 5, lines 19-31).

Regarding claims 8, 19, and 30, **Jacobi** further teaches a step comprising:

- a). selecting a category from the plurality of categories utilizing the weight biases of the categories in a randomly based selection algorithm (col. 14, lines 36-48); and
- b). randomly selecting a product from the selected category (col. 5, lines 19-22).

Regarding claims 9, 20, and 31, **Jacobi** further teaches a step comprising:

- a). scoring each product based upon weight biases of "like" categories (Fig. 5, element 180) and "dislike" categories (Fig. 5, element 190), a "like" category being a category that the main product is associated with, a "dislike" category being a category that the main product is not associated with, a weight bias being a predefined value assigned to each respective category to denote the respective category's importance (col. 8, lines 28-38);

- b). creating a "like" score table, the "like" score table including a "like" score for each of the products indicating the relatedness of the product to the main product (Fig. 1, element 60); and
- c). randomly selecting the at least one other related product from the "like" score table using the "like" scores as a weight bias (col. 12, lines 61-65).

Regarding claims 10, 21, and 32, **Jacobi** further teaches a step comprising:

- a). creating a "dislike" score table, the "dislike" score table including a "dislike" score for each product indicating the unrelatedness of the product to the main product, the "dislike" score table being the transposition of the "like score table" (col. 8, lines 28-39); and
- b). randomly selecting at least one other product from the "dislike" score table using the "dislike" scores as a weight bias (col. 5, lines 19-31).

Regarding claims 11, 22, and 33, **Jacobi** further teaches a step of selecting at least one other product at random from one of the plurality of categories (col. 5, lines 19-22).

Response to Argument

8. Applicant's arguments with respect to claims 1, 3-12, 14-23, and 25-33 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leslie Wong whose telephone number is (571) 272-4120. The examiner can normally be reached on Monday to Friday 9:30am - 6:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John E. Breene can be reached on (571) 272-4107. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Leslie Wong
Primary Patent Examiner
Art Unit 2167

LW
September 16, 2005